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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,570

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY,
Appellant,

v.

EZRA TAFT BENSON, individually and as Secretary of Agriculture, et al., *Appellees.*

Appeal From Order of the United States District Court for the District of Columbia Denying Preliminary Injunction

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JOINT APPENDIX

Filed Aug. 31, 1956

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3632-56

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY,
Davenport, Iowa, *Plaintiff*,

v.

EZRA TAFT BENSON, individually and as Secretary of Agriculture,

DAVID A. HAMIL, individually and as Administrator of the Rural Electrification Administration, and

FRED H. STRONG, individually and as Deputy and as Acting Administrator of the Rural Electrification Administration,
Defendants.

Complaint for Declaratory Judgment and Injunctive Relief

AS AND FOR THE FIRST COUNT OF ITS COMPLAINT HEREIN, PLAINTIFF ALLEGES:

1. This is an action for a declaratory judgment and for a permanent injunction and other relief brought pursuant to the provisions of the Declaratory Judgment Act (Act of June 25, 1948, c. 646, 62 Stat. 964, as amended by the Act of May 24, 1949, c. 139, 63 Stat. 105, 28 U.S.C. §§ 2201-2) and the general equity powers of the United States District Court for the District of Columbia, and under the Administrative Procedure Act (Act of June 11, 1946, c. 324, 60 Stat. 237, 5 U.S.C. §§ 1001-9). There is now existing between the parties an actual controversy justiciable in character. With respect to that controversy the plaintiff needs a declaration of its rights by this Court and the relief herein prayed.

2. Plaintiff is a corporation organized and existing
2 under the laws of the State of Illinois and is duly

qualified to carry on its business in the State of Iowa and has its principal office in Davenport, Iowa.

3. The defendant Ezra Taft Benson is Secretary of Agriculture of the United States of America. The defendant David A. Hamil is Administrator of the Rural Electrification Administration, an agency in the Department of Agriculture. The defendant Fred H. Strong is Deputy Administrator of said Rural Electrification Administration, and at certain times hereinafter stated was Acting Administrator of said Rural Electrification Administration.

4. This action arises under the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901-14 (hereinafter called the RE Act). The interest of plaintiff in the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.

5. Plaintiff is an electric utility company which generates, purchases, transmits, distributes and sells electric energy over a broad service territory which covers a part of Illinois and 13 counties of Iowa, including specifically Webster County. In order to furnish electric energy to the customers within its service territory, plaintiff owns and maintains facilities, including thermal generating stations, transmission and distribution lines and appurtenances, having a total cost of more than $72,000,000.

6. As a part of its facilities plaintiff now owns and operates an electric system in Webster County, Iowa, which it purchased for approximately $784,000 under an
3 agreement with the Fort Dodge, Des Moines & Southern Railway Company (hereinafter called the Railway) dated March 15, 1956. An industrial customer of plaintiff in Webster County called Lehigh Sewer Pipe and Tile Company (hereinafter called Lehigh Pipe) receives, and for many years has received, central station service from that system. In addition, a municipal customer and a number of other industrial customers are, and

have been for many years, receiving central station service from that system.

7. Lehigh Pipe has in the past received from plaintiff or the Railway, and is presently receiving from plaintiff, by means of the aforesaid electric system, 25 cycle service. The town of Lehigh has in the past received from plaintiff or the Railway, and is presently receiving from plaintiff by means of the aforesaid electric system 60 cycle service.

8. Lehigh Pipe is building, and intends to complete, on a portion of the tract of land presently occupied by its plant a substantial addition to its present facilities for which 60 cycle service is desired. Early in 1955 the Railway offered to provide Lehigh Pipe with 60 cycle service for the addition to its plant facilities. The electric service requirements for the operation of Lehigh Pipe after completion of its additional facilities will be approximately 1,200 kilowatts and energy consumed will exceed 2,500,000 kilowatt hours per year.

9. At all times involved in this complaint plaintiff, or the Railway, was providing central station service to Lehigh Pipe and at all times involved in this complaint plaintiff, or the Railway, was willing and anxious to provide Lehigh Pipe with whatever additional service would be required because of the construction of the addition to the Lehigh Pipe plant.

4 10. Greene County Rural Electric Cooperative (hereinafter called Greene County Coop) is an incorporated association which acts as a distribution cooperative serving a number of customers in Webster County, Iowa, among other counties. Greene County Coop is a member of Central Iowa Power Cooperative (hereinafter called CIPCO). CIPCO is also an incorporated association which through its generating and transmission facilities supplies the electric energy requirements of Greene County Coop.

11. Some time after the Railway's offer to provide 60 cycle service for Lehigh Pipe's proposed additional plant facilities, Greene County Coop entered into negotiations with Lehigh Pipe for a contract to provide the electric power requirements for such additional facilities for a period of 20 years. Such negotiations took place at a time when Lehigh Pipe was receiving central station service from the Railway. As a prerequisite to furnishing the proffered service, and antecedent to the execution of a contract, authorization for a Rural Electrification Administration loan to construct the necessary transmission facilities was required.

12. In order for Greene County Coop to supply the electric power requirements of Lehigh Pipe, it was arranged that CIPCO build a transmission line of about 20 miles from a point west of Boone, Iowa, to a tap near the town of Lehigh. CIPCO, in order to finance the building of such transmission line to serve Lehigh Pipe, applied to the Rural Electrification Administration for a loan. A representative of Greene County Coop alleged in a proceeding before the Iowa State Commerce Commission that Lehigh Pipe was the only new customer to be served from the transmission line to be constructed.

13. Although Lehigh Pipe was already receiving central station service from the Railway and, therefore, was not a proper beneficiary under the RE Act to support the granting of an REA loan to supply its power requirements, a contract for a loan to CIPCO (designated Iowa 63EF Cedar Rapids), including approximately $120,000 for the above-described transmission line, was announced as having been signed on or about September 9, 1955, by defendant Strong as Acting Administrator.

14. By contract entered into under date of November 25, 1955, between Lehigh Pipe and Greene County Coop, it was agreed that Greene County Coop commencing in or about September of 1956 would for a 20-year period furnish the

electric power requirements of Lehigh Pipe's proposed addition.

15. CIPCO is proceeding to acquire all rights necessary to the construction of the transmission line in question and is proceeding as rapidly as possible to effect the construction of such transmission line, and unless defendants are enjoined as herein prayed the construction of such line soon will be commenced and completed. A representative of CIPCO stated in hearings before the Iowa State Commerce Commission that construction of the transmission line will require only about 30 days.

16. The effect of the illegal loan without which the transmission line could not be constructed will be to deprive plaintiff of the right to serve Lehigh Pipe, a customer previously and presently being served, and one who under the provisions of the RE Act has no standing as a beneficiary of an REA loan. Another consequence of the illegal loan will be to invest Greene County Coop with transmission facilities by which it may deprive plaintiff of other industrial and municipal customers presently receiving central station service from plaintiff. To that end Greene County Coop has already offered service from the proposed REA financed transmission line to the town of Lehigh and Kalo Brick & Tile Company, both customers presently receiving central station service from plaintiff.

17. Unless the relief herein prayed is granted, such illegal loan will result in irreparable injury and damage to the property and property rights of plaintiff, in that the proximate result thereof will be to deprive plaintiff of a profitable use of its recently purchased electric system and will cause loss of revenue to the plaintiff which will continue over a long period of time. The aggregate amount of injury and damage, although substantial, is not subject to exact determination.

18. The plaintiff is without any adequate remedy at law to prevent the injury and damage to its property and prop-

erty rights which it will sustain as the result of such illegal loan.

As and for the Second Count of Its Complaint Herein, Plaintiff Alleges:

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 16 hereof with the same force and effect as if herein set forth in full.

20. On information and belief of plaintiff, after the signing of the aforementioned loan contract, the eligibility of Lehigh Pipe as a beneficiary of a Rural Electrification Administration loan was reconsidered, and a decision was made in the Rural Electrification Administration that Lehigh Pipe was not an eligible loan beneficiary under the RE Act because it was already in receipt of central station service.

21. On information and belief of plaintiff, on or about May 24, 1956, after meetings between defendant Strong and other REA personnel and representatives of Greene County Coop or CIPCO or both and other persons to plaintiff unknown, defendant Strong reversed the decision that Lehigh Pipe was not an eligible beneficiary of a Rural
7 Electrification Administration loan and re-approved that portion of the loan contract which would enable CIPCO to construct a transmission line to serve Lehigh Pipe.

22. The above-described actions of defendant Strong and the representatives of Greene County Coop or CIPCO or both and other persons to plaintiff unknown constitute an unlawful and continuing conspiracy, as a result of which the qualification of Lehigh Pipe as an RE Act beneficiary which had been rejected as not meeting the legal requirements of the RE Act was approved and remains approved.

23. Defendant Hamil took office as Administrator of the Rural Electrification Administration on June 26, 1956. Thereafter plaintiff advised defendant Hamil of the illegal-

ity, hereinabove alleged, of that portion of the loan contract to finance construction of a transmission line to serve Lehigh Pipe, and requested him to review the matter and cancel such portion of the loan. Defendant Hamil has advised plaintiff that he has reviewed the matter, and he has refused to cancel such portion of the loan. Defendant Hamil has thereby adopted the action herein complained of and become a co-conspirator in the hereinabove alleged unlawful and continuing conspiracy.

24. Unless the relief herein prayed is granted, such unlawful conspiracy will result in irreparable injury and damage to the property and property rights of plaintiff in that the proximate result thereof will be to deprive plaintiff of a profitable use of its recently purchased electric system and will cause loss of revenue to plaintiff which will continue over a long period of time. The aggregate amount of such injury and damage, although substantial, is not subject to exact determination.

25. Plaintiff is without any adequate remedy at
8 law to prevent the carrying out of the unlawful conspiracy and the injury and damage to its property and property rights which it will sustain as the result of such unlawful conspiracy.

WHEREFORE, plaintiff prays:

1. That this Court decree that the loan contract the approval of which on or about September 9, 1955, was announced by the Acting Administrator of the Rural Electrification Administration in so far as such loan contract provides for the financing of the construction of a transmission line to serve Lehigh Sewer Pipe and Tile Company is without authority under the Rural Electrification Act and is, therefore, invalid and void;

2. That this Court decree that all action taken by the defendants in furtherance of said loan contract in so far as it so provides is invalid, unlawful and without effect;

3. That this Court, pending final hearing and determination of this action, enter an order granting a preliminary injunction restraining the defendants and each of them, their successor or successors in office, their assistants, employees, agents and other persons acting under their control and authority from taking any steps whatsoever to effectuate and carry out said loan contract in so far as it provides for the financing of the construction of a transmission line to serve Lehigh Sewer Pipe and Tile Company;

4. That this Court upon final hearing and determination of this action, enter a decree permanently enjoining the defendants and each of them, their successor or successors in office, their assistants, employees, agents and other persons acting under their control and authority from taking any steps whatsoever to effectuate and carry out said loan contract in so far as it provides for the financing of the
9 construction of a transmission line to serve Lehigh Sewer Pipe and Tile Company; and

5. That plaintiff have such other and further relief as to the Court may seem just and proper.

August 31, 1956

WILMER & BROUN

by HENRY T. RATHBUN
A Member of said Firm
616 Transportation Building
Washington 6, D. C.
Attorneys for Plaintiff

STATE OF IOWA
COUNTY OF SCOTT } ss.:

C. J. MATH, being first duly sworn, on oath deposes and says: that he is Vice President of Iowa-Illinois Gas and Electric Company; that he has read the foregoing and annexed Complaint; that he knows the contents thereof; and that the facts therein stated he verily believes to be true.

C. J. MATH

Subscribed and sworn to before me this 30th day of August, 1956.

R. C. SCHELLHORN
Notary Public

My commission expires July 4, 1957

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10 Filed Aug. 31, 1956

Motion for Preliminary Injunction

Now comes the plaintiff by its counsel, and upon the verified complaint filed herein, and the facts set forth therein, and upon the statement of points and authorities submitted herewith, respectfully applies to this Honorable Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure for a preliminary injunction, enjoining and restraining the defendants herein and their successors in office, and officers, agents, assistants, servants, employees and attorneys and other persons acting under their control or authority, and those persons in active concert or participation with any of them from taking any steps whatsoever to effectuate and carry out the provisions of the loan contract signed on or about Spetember 9, 1955, in so far as any of such provisions relate to a loan by the Rural Electrification Administration to Central Iowa Power Cooperative for the pur-
11 pose of financing the construction of a transmission line which would furnish electric power to Greene County Rural Electric Cooperative and through Greene

County Rural Electric Cooperative to Lehigh Sewer Pipe and Tile Company.

August 31, 1956

WILMER & BROUN

by HENRY T. RATHBUN
A Member of said Firm
616 Transportation Building
Washington 6, D. C.
Attorneys for Plaintiff

---

29 Filed Sep. 18, 1956

Plaintiff's Exhibit No. 1

Affidavit

STATE OF IOWA
SCOTT COUNTY } ss.

I, Edward J. Hartman, being duly sworn on oath, depose and say:

1. I am an attorney at law employed by Iowa-Illinois Gas and Electric Company.

2. On September 14, 1956, I attended a hearing before the Iowa State Commerce Commission at Des Moines, Iowa, in connection with the application of Iowa-Illinois Gas and Electric Company for a franchise (Dockets Nos. E-11725 and E-11726).

3. At that hearing Joe Bryant, vice president and general manager of Lehigh Sewer Pipe & Tile Company, testified that because of the effects of the recent steel strike the proposed new plant facilities now under construction would not be completed until approximately February 1, 1957.

30 4. Upon information and belief of deponent, the statement by Mr. Bryant referred to above is true.

EDWARD J. HARTMAN
Edward J. Hartman

Subscribed and sworn to before me, a notary public in and for Scott County, Iowa, this 17th day of September 1956.

W. B. WATERMAN
Notary Public

---

31 Filed Sep. 18, 1956

Plaintiff's Exhibit No. 2

Affidavit

STATE OF IOWA }
SCOTT COUNTY } ss.

I, C. J. Math, being first duly sworn on oath, depose and state:

1. I am vice president, districts and sales, of Iowa-Illinois Gas and Electric Company in charge of operations in the Fort Dodge District comprising generally operations of the Company in Webster County.

2. All franchises from the Iowa State Commerce Commission which will enable Iowa-Illinois to serve the 60-cycle requirements of the additional plant facilities of Lehigh Sewer Pipe & Tile Company in Webster County, Iowa, have been received, except one which has been submitted and is now awaiting ruling.

32 3. Except for seven miles of transmission line which has not yet been constructed, the facilities to serve the 60-cycle requirements of Lehigh Pipe's additional facilities are substantially completed.

4. The construction of said seven miles of transmission line can be completed under ordinary working conditions in a period of 60 days.

C. J. MATH
C. J. Math

Subscribed and sworn to before me, a notary public in and for Scott County, Iowa, this 17th day of September 1956.

W. B. WATERMAN
Notary Public

---

12 Filed Sep. 11, 1956

Opposition to Motion for Preliminary Injunction

Come now the defendants by their attorney, the United States Attorney, and respectfully opposes the plaintiff's motion for preliminary injunction. The grounds therefor are set forth in the attached Memorandum of Points and Authorities. There are attached hereto and prayed to be made a part hereof certain affidavits and exhibits numbered 1 through 5.

OLIVER GASCH
Oliver Gasch
United States Attorney

EDWARD P. TROXELL.
Edward P. Troxell, *Principal Assistant United States Attorney*

FRANK H. STRICKLER
Frank H. Strickler
Assistant United States Attorney

E. RILEY CASEY
E. Riley Casey
Assistant United States Attorney

Of Counsel:

WILLIAM ARNOLD
William Arnold, *Attorney*
Department of Justice

E. F. MYNATT
E. F. Mynatt, *Ass't. General Counsel, Dept. of Agriculture*

13 Filed Sep. 11, 1956

Exhibit 1

Affidavit

DISTRICT OF COLUMBIA) ss

FRED H. STROHE, being first duly sworn, deposes and says as follows:

1. He is Deputy Administrator of the Rural Electrification Administration (REA), an agency of the Department of Agriculture of the United States of America, and he was Acting Administrator, REA, on or about September 9, 1955, and in that capacity and on that date he approved for the United States of America, a loan (designated Iowa 83EF Cedar Rapids) in the amount of $11,173,000 to Central Iowa Power Cooperative ("CIPCO"), Cedar Rapids, Iowa.

2. This loan was made pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.) and in accordance with the administrative findings required by 7 U.S.C. 904, to finance the construction by CIPCO of certain electric generating and transmission facilities, including one 44,000 KW generating unit, 138 miles of 115 KV transmission line, 176.5 miles of 34.5 KV transmission line, and related substation and switching facilities, for the purpose of furnishing electric energy to CIPCO's eight REA-financed member cooperatives.

14 3. Included in the 176.5 miles of 34.5 KV transmission line were 20 miles designated the "Lehigh Tap", to enable CIPCO to furnish one of its member cooperatives, Greene County Rural Electric Cooperative ("Greene County"), with a supply of power for a large power load in the vicinity of Lehigh, Iowa.

4. In October 1955, Greene County, in accordance with its REA loan agreements, submitted for REA approval a

contract for electric service, dated October 4, 1955, between Greene County and Lehigh Sewer Pipe and Tile Company ("Lehigh").

5. On or about November 15, 1955, this contract was returned without approval to Greene County, because it appeared that Lehigh was then receiving 25 cycle electric service from Fort Dodge, Des Moines and Southern Railway.

6. In April 1956, Greene County and CIPCO renewed their request for REA approval of a contract for electric service between Greene County and Lehigh. Facts were presented by Greene County and CIPCO showing that the contract contemplated service not to the existing plant of Lehigh, nor to an extension of or addition to the existing plant, but to a completely new, separate and independent plant. After investigation and consideration by REA of these and all relevant facts and circumstances, an administrative determination was made, pursuant to 7 U.S.C. 904, that Lehigh, at its new plant, was not receiving central station electric service. The Greene County-Lehigh contract, dated November 25, 1955, was approved on June 19, 1956.

7. Each and every action taken by me and by REA in respect of the loan to CIPCO and approval of the Greene County-Lehigh contract was in accordance with the requirements of the Rural Electrification Act of 1936, of the administrative policies and procedures of REA, and of the loan agreements between the United States and the borrowers concerned.

8. In approving the CIPCO loan, revenue from the potential consumers, provided for in the loan, was taken into account in making the feasibility studies and findings required by 7 U.S.C. 904. Delay in serving or prevention of service to a consumer provided for in the loan will adversely affect the ability of CIPCO to repay its loan,

and will therefore injure and damage the Government's security for the loan.

FRED H. STRONG
Fred H. Strong

Subscribed in my presence and sworn to before me this 7th day of September 1956.

ELVA WINTERS
Notary Public

My commission expires Dec. 14, 1956

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16 Filed Sep. 11, 1956

Exhibit II

Affidavit

17 DISTRICT OF COLUMBIA) ss

I, CLARKE E. BENNETT, being first duly sworn, on oath depose and state:

That I am a Registered Professional Engineer, same being #2780 issued by the Iowa State Board of Engineering Examiners; that I am the Transmission Engineer of Brown Engineering Company, consulting engineers, Des Moines, Iowa; that Brown Engineering Company is the consulting engineer retained by the Central Iowa Power Cooperative, Cedar Rapids, Iowa (hereinafter referred to as "CIPCO"), to design and supervise the construction of an expansion program, including a 100% increase in generating capacity, and appropriate additional transmission facilities, including the 34,500 volt transmission line commonly referred to as the "Lehigh Tap"; that I have read, have access to, and am generally familiar with the various contracts, documents and instruments between CIPCO and its member cooperatives, including the Greene County Rural Electric Cooperative; that I have personal

knowledge of the general design, construction and condition of the electric facilities formerly owned by the Fort Dodge, Des Moines & Southern Railway Company in Webster County, Iowa, and particularly in the area of the Town of Lehigh, presently claimed to be owned and operated by the Iowa-Illinois Gas & Electric Company.

That the wholesale power contract between CIPCO and its member cooperatives, including the Greene County Rural Electric Cooperative, contains appropriate exchange of obligations and agreements that the Greene County Co-

operative shall purchase all of its electrical require-
18 ments at wholesale from CIPCO, and that CIPCO shall provide at load centers as determined by the System Studies of the Greene County Cooperative, such quantities and voltages of electrical current as may be required by said Studies to provide adequate and dependable electrical service at the substations of the Greene County Cooperative; that the System Studies of the Greene County Cooperative show the necessity of a substation near the Town of Lehigh, Iowa; that the minimum voltage of transmission line in the CIPCO system is 34,500 volts; that under its obligation to provide the electric power requirements of the Greene County Cooperative, it is necessary that CIPCO construct a 34,500 volt transmission line to a point near Lehigh, Iowa, at which point the Greene County Cooperative may attach a substation owned by the Greene County Cooperative for the purpose of transforming 34,500 volt electrical current to 7,200/12,500 volts for the purpose of distribution to the Greene County consumers.

That CIPCO did apply to the Administrator of the Rural Electrification Administration for the authorization of a loan to finance the construction of the entire expansion program, including additional generation and transmission facilities, and including particularly the construction of a 34,500 volt transmission line to the vicinity of Lehigh, Iowa; that said loan was granted and authorized by the

Acting Administrator of the Rural Electrification Administration under date of September 9, 1955; that in reliance upon said loan, CIPCO did advertise for proposals from contractors for the construction of certain transmission lines, including the Lehigh Tap; that the proposal of the Hoak Construction Company was accepted, and a contract executed between CIPCO and said Hoak Construction
19 Company; that said Hoak Construction Company has begun to perform said contract, and has completed a substantial portion of said contract and is presently actively engaged in the consummation and completion of said contract.

That proceeding under the Laws of the State of Iowa, CIPCO did apply to the Iowa State Commerce Commission for a franchise authorizing the construction of said transmission line over, along and upon certain prescribed right-of-way, same being Dockets E-11725 and E-11726 of the records of the Iowa State Commerce Commission; that objections to said franchise were filed by the Iowa-Illinois Gas & Electric Company before said Commission to the granting of said franchise; that hearings were held on July 10, 1956, upon said Application and said Objections, both of which were vigorously contended before said Commission; that written briefs were filed in said matter, and that on August 28, 1956, the said Iowa State Commerce Commission did order the franchise issued as applied for by CIPCO.

That relying upon the documentation of said loan and relying upon the approval of the Plans and Specifications for said Lehigh Tap by the Administrator of the Rural Electrification Administration, CIPCO did enter into certain engineering service contracts and the construction contract with Hoak Construction Company, and has acted upon said contracts including the preparation of plans and drawings, the obtaining of right-of-way, and construction of portions of said line; that the Complaint filed in the case of Iowa-Illinois Gas & Electric Company v. Ezra

Taft Benson, et al, shows upon its face that Complainant had knowledge of said loan for more than nine months before the filing of said Complaint, and that said Iowa-Illinois Gas & Electric Company had knowledge of the reliance of said CIPCO upon said loan and incurring of obligations thereunder.

That the present facilities alleged to be owned and operated by the Iowa-Illinois Gas & Electric Company in the area of Lehigh, Iowa, are incapable of supplying the quantity, quality or reliability of 60 cycle electric service required by the totally new manufacturing plant being constructed by the Lehigh Sewer Pipe & Tile Company without the major reconstruction of the presently old and decrepit 2,300 and 7,200 volt single phase farm distribution lines owned and operated by said Iowa-Illinois Gas & Electric Company in the vicinity of Lehigh, Iowa; that said Iowa-Illinois Gas & Electric Company is presently rebuilding said distribution line for 13,800 volts three-phase operation, receiving an appropriate franchise for approximately 9 miles after hearing on August 14, 1956, and after having been stopped in construction of said line by the Iowa State Commerce Commission for having failed to obtain appropriate franchise rights; that said Iowa-Illinois Gas & Electric Company has now on file with the Iowa State Commerce Commission an application for a franchise for approximately 7.5 miles which, if granted, would authorize the construction of facilities which could furnish sufficient capacity to serve said new manufacturing plant, but that said franchise application is scheduled for hearing before said Iowa State Commerce Commission on September 11, 1956.

FURTHER DEPONENT SAYETH NOT.

CLARKE E. BENNETT
Clarke E. Bennett

Subscribed in my presence and sworn to before me by the said Clarke E. Bennett, this 7th day of September, A.D., 1956.

ELVA WINTERS
Notary Public.

(Notarial Seal.)
My Commission Expires Dec. 14, 1956.

Exhibit III

21 Filed Sept. 11, 1956

Affidavit

I, Donald R. Norris, being first duly sworn, on oath depose and state:

1. That I am a Registered Professional Engineer, same being #2846, issued by the Iowa State Board of Engineering Examiners; that I am Electrical Engineer for the Greene County Rural Electric Cooperative, Jefferson, Iowa; that I am familiar with the various instruments and contracts between the Cooperative and the Central Iowa Power Cooperative (hereinafter referred to as "CIPCO"), and have physical access to copies thereof; that I have examined and have physical access to the contract between the Cooperative and Lehigh Sewer Pipe & Tile Company; that as the Electrical Engineer of the Cooperative, I made an engineering system study of the electrical characteristics and requirements of the consumers of the Cooperative to determine the manner of providing the most reliable and adequate electrical service to the said consumers of the Cooperative, and revise said system study from time to time as the characteristics of electrical requirements of said consumers change.

2. That under the contractual undertakings between the Cooperative and CIPCO, the Cooperative is obligated to

purchase all of its electrical requirements from CIPCO, and CIPCO is obligated to make available to the Cooperative at distribution load centers all the electrical
22 requirements of the Cooperative; that the Cooperative entered into a contract with the Lehigh Sewer Pipe & Tile Company for the furnishing of electrical service to a totally new manufacturing plant to be constructed on real estate owned for many years by said Company; that an analysis of the electrical requirements of said Tile Company in addition to the existing requirements of consumers in the general area revealed the engineering necessity for the location of a new substation in the general area of Lehigh, Iowa; that the Cooperative requested CIPCO to construct a new transmission line to said newly determined loan center, and that CIPCO undertook the necessary proceedings to acquire authorization to build said transmission line; that in reliance upon said authorization to CIPCO, including a loan from the United States Government acting through the Rural Electrification Administration, the approval of an Engineering Service Contract by REA authorizing the engineers for CIPCO to design and locate said transmission line, the award of a contract to a construction contractor and approved by REA for the actual construction of said transmission line, and the acquisition of right-of-way and application for franchise from the Iowa State Commerce Commission by CIPCO, the Cooperative contracted for and did purchase the necessary substation structures and equipment for a sum in excess of $40,000 to receive electric service at the proposed new substation and provide capacity to fulfill its contract with the Sewer Pipe Company and to provide the improved service to existing and potential consumers; that a substation of comparable cost would be necessary to meet the electrical requirements of the existing and acquired consumers in approximately five years, regardless of the requirements of the Tile Company, and that the only difference would be the physical location of said

substation which would have to be determined from a new system study of the service area.

3. That in addition to the requirements of the Sewer Pipe Company, the Cooperative will connect approximately 138 existing consumers to said new substation; that the Cooperative has contracted to serve approxi-
23 mately 123 additional consumers, approximately 50 of which will be attached to and receive service directly from said new substation; that in addition to the approximately 188 farm consumers which will be immediately served from said substation, electrical circuits will be so located and constructed as to furnish loop service to an additional 119 existing consumers in cases of outages at a substation presently owned and operated by the Cooperative and referred to as the "Ridgeport Substation"; that such construction will substantially improve the reliability and adequacy of electrical service to said total of approximately 307 farm consumers of the Cooperative, regardless of the attachment of the electrical load of the Sewer Pipe Company.

4. That for more than three and one-half years, the Cooperative has been furnishing 60 cycle electrical service from a 7,200 volt, single phase distribution line to a residence owned by the Sewer Pipe Company and located upon the tract of real estate owned by said Company for many years and upon which said new manufacturing plant is being constructed, which said residence is occupied by the head kiln fireman for said Sewer Pipe Company.

DONALD R. NORRIS
Donald R. Norris

Subscribed in my presence and sworn to before me this 7th day of September, 1956.

ELVA WINTERS
Notary Public

My Commission Expires Dec. 14, 1956.

Exhibit IV

Filed Sept. 11, 1956

Affidavit

STATE OF IOWA
WEBSTER COUNTY } ss:

I, Joe A. Bryant, being first duly sworn, on oath depose and state:

That I am Vice-President and General Manager of Lehigh Sewer Pipe & Tile Company, with general offices at Fort Dodge, Iowa, and a manufacturing plant at Lehigh, Iowa; that I am actively engaged in the management of the business and affairs of said Company, and participate in the consideration of general policies adopted by the Board of Directors of said Company.

That the present plant owned and operated by said Company at Lehigh, Iowa, was in 1955 served with 25 cycle electrical service by the Fort Dodge, Des Moines & Southern Railway Company, and is now served with said 25 cycle electrical service by the Iowa-Illinois Gas & Electric Company; that disregarding the contract provisions for such 25 cycle electrical service, the Iowa-Illinois Gas & Electric Company has now notified the Company that it will discontinue the availability of 25 cycle electrical service as of September 30, 1957.

That in 1955, said Company considered the establishment of a totally new manufacturing plant for the production of sewer pipe and tile; that two important requirements for such a plant are an adequate supply of the peculiar quality of clay required for such tile and an adequate supply of electricity at a price which will permit production within costs competitive in the industry; that modern machinery requires the availability of 60 cycle electrical service; that the area of Lehigh has an adequate supply of appropriate clay, and was one

of four sites considered for the location of the new plant; that the local suppliers of electrical service at 60 cycles were the Town of Lehigh, and the Greene County Rural Electric Cooperative; that in response to a request, the Town of Lehigh advised the Company that it could not furnish electrical service at 60 cycles in the quantities and with the reliability of service required for the operation of such a manufacturing plant, requiring approximately one-fourth of the connected plant load in service around the clock; that the Fort Dodge, Des Moines & Southern Railway Company proposed the furnishing of such electrical service, but because of the necessity of substantial additional investment in facilities, quoted a rate for such electrical service as would have prevented the Company from producing its products at a price which would be competitive in this highly competitive industry; that negotiations were undertaken with the Greene County Rural Electric Cooperative, and a contract was concluded and executed; that upon the determination of an available electrical supply of sufficient reliability, quantity and price, the Company determined to construct said totally new manufacturing plant on real estate already owned by said Company at Lehigh.

That modern machinery for the manufacture of the products of the Company requires the use of electricity at 60 cycles, rather than the now outdated and outmoded use of electricity at 25 cycles; that while machinery requiring 25 cycles service might be obtained, it would only be by special order and special manufacture, and would present problems of first cost, maintenance and spare parts; that intervening time has resulted in the Company being advised that 25 cycle service would not be available after September 30, 1957, confirming the decision of the Company to build for 60 cycle electric service in the new plant; that the Iowa-Illinois Gas & Electric Company did not have 60 cycle electric service available in the vicinity of Lehigh in sufficient quantities and of sufficient reliability at the time of

these considerations to fulfill the requirements of said new manufacturing plant, and does not have such facilities at the time of this affidavit.

That the new manufacturing plant, which will be served under the contract between the Company and the Greene County Rural Electric Cooperative, is a totally new, separate and independent facility of the Company; that
26 its operation will be completely independent and without any interchange of products work, or material with existing facilities of the Company; and that this new plant to be served by Greene County Rural Electric Cooperative will be as totally separate and apart from the existing facilities of the Company in its operation as though it were constructed many miles distant from the presently existing and operating plant.

That the residence of the head kiln fireman for the company owned and located on the same general tract of land as the existing and operating plant, and as the newly constructed plant, has been satisfactorily served with electricity by the Greene County Rural Electric Cooperative for approximately four years, and it is expected that it will continue to be so served.

That this Company has a binding contract with the Greene County Rural Electric Cooperative for the furnishing of electrical service; that this Company expects to comply with its contractual obligations under the terms of said contract; and that this Company expects the Greene County Rural Electric Cooperative to comply with its contractual obligations thereunder.

FURTHER DEPONENT SAYETH NOT.

JOE A. BRYANT
Joe A. Bryant

Subscribed in my presence and sworn to before me by the said Joe A. Bryant, this 8th day of September, A.D. 1956.

Esther Piotter
Notary Public in and for Webster County, Iowa.

(Notarial Seal.)

My Commission Expires July 4, 1957.

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27 **Exhibit V**

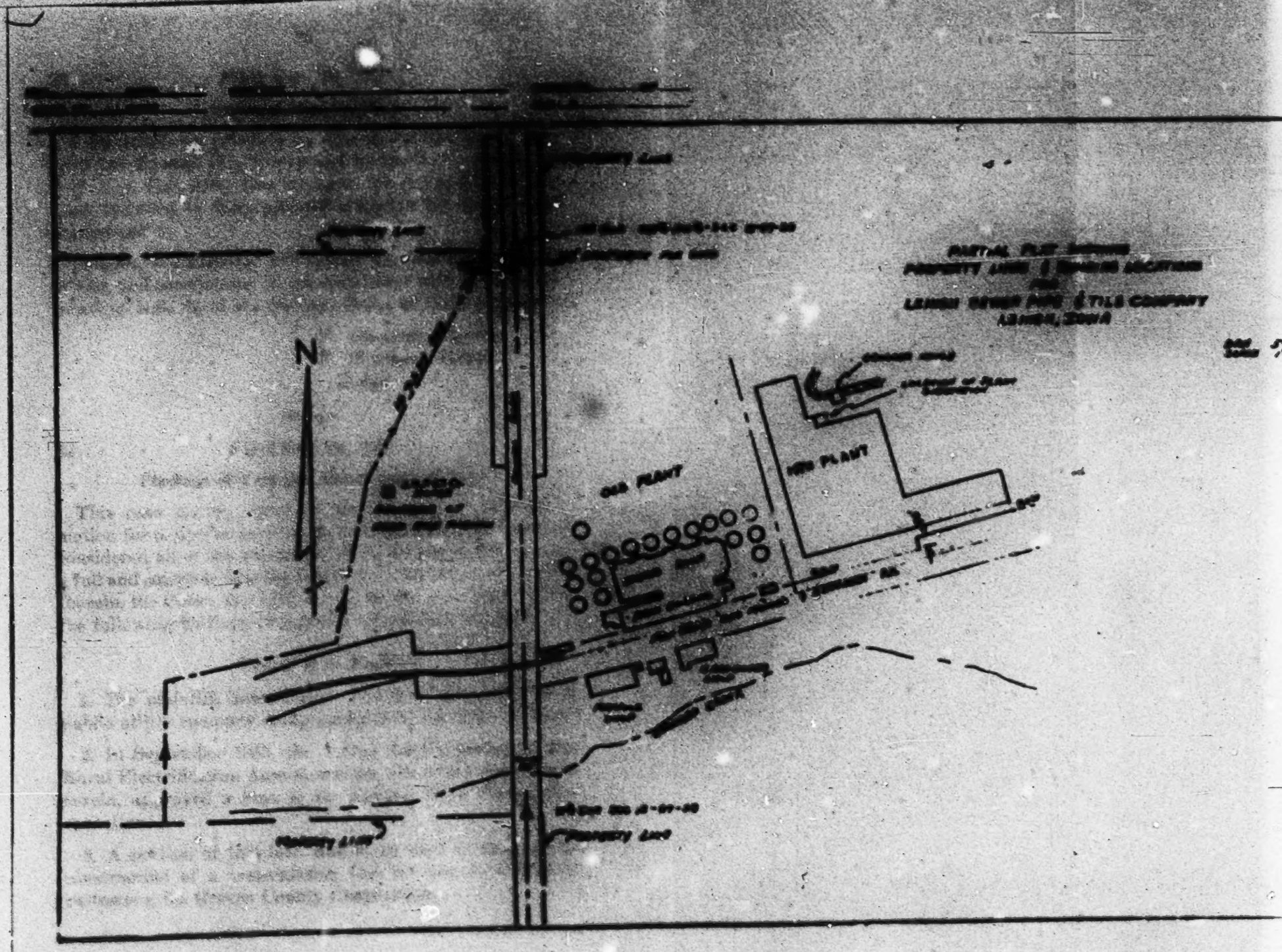
Certification to be Appended to Map of the Buildings of the Lehigh Sewer Pipe & Tile Company

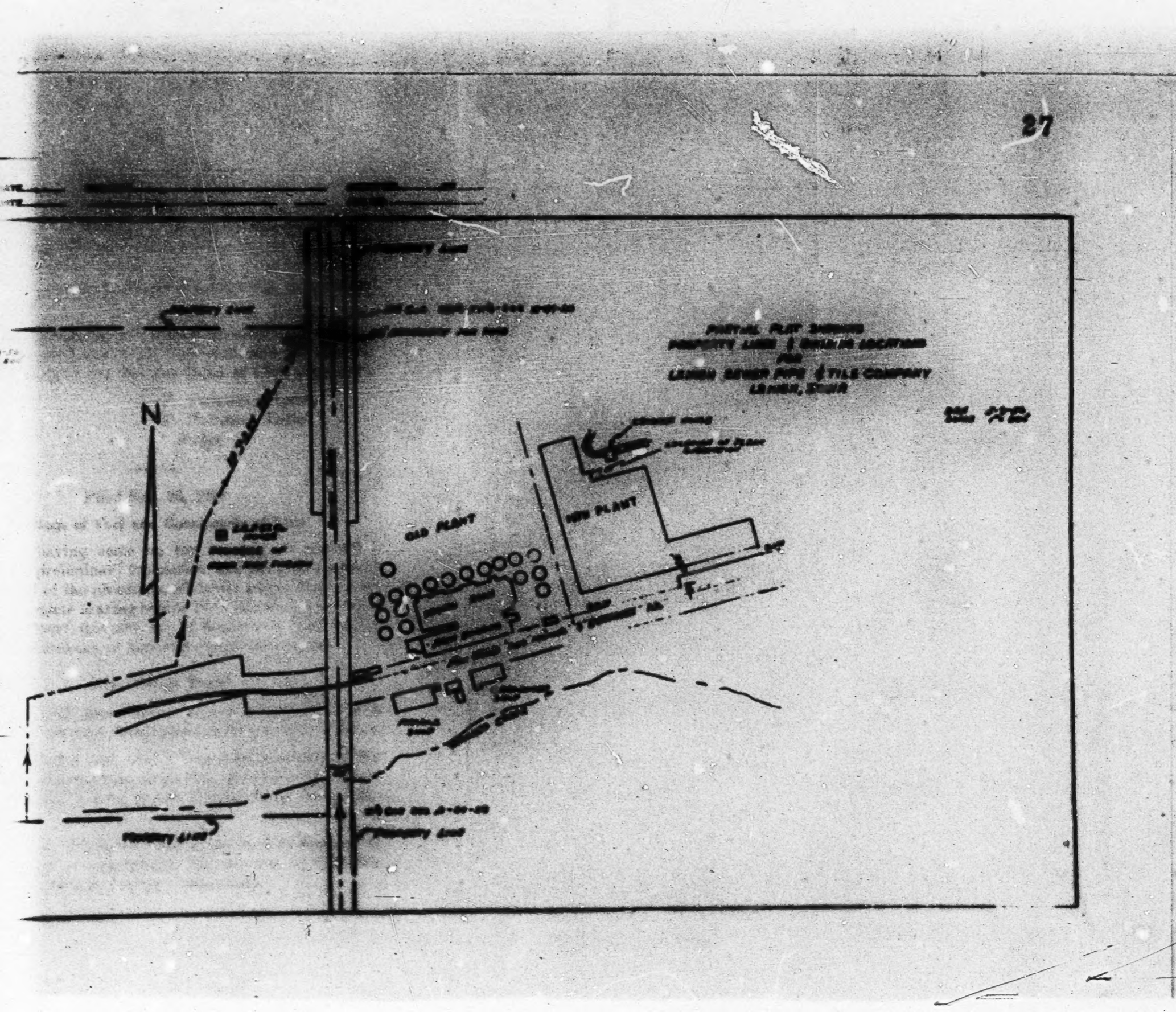
Filed Sep. 11, 1956

This Plat is hereby certified to be a proper representation of the location of existing buildings and construction of present manufacturing plant, and the location of an entirely new manufacturing plant being constructed, all of the Lehigh Sewer Pipe & Tile Company, Lehigh, Iowa. The Company owns approximately 227.47 acres in the entire tract, and this drawing shows only that portion upon which are located the manufacturing plant and immediately adjacent area.

Dated September 8, A.D., 1956.

Joe A. Bryant
Joe A. Bryant
Vice-President and General Manager, Lehigh Sewer Pipe & Tile Company.


N
OLD PLANT
NEW PLANT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(P. 28 BLANK)

33 Filed Sep. 24, 1956

Informal Memorandum

I am unable in principle to distinguish the case at bar from the Kansas City Power and Light Co. v. McKay, 96 U.S. App. D.C. 273. Relying upon the ruling in that case I am impelled to deny plaintiff's motion for preliminary injunction.

Counsel for defendant will submit for settlement findings of fact and conclusions of law consistent with the requirements of Rule 52 of the Federal Rules of Civil procedure.

F. DICKINSON LETTS
F. Dickinson Letts
Judge

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34 Filed Sep. 26, 1956

Findings of Fact and Conclusions of Law

This case having come on for hearing on plaintiff's motion for a preliminary injunction, and the Court having considered all of the pleadings, affidavits and evidence, and a full and complete hearing having been afforded the parties thereto, the Court, this 26th day of September, 1956, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The plaintiff, Iowa-Illinois Gas & Electric Co., is a public utility company doing business in the state of Iowa.

2. In September 1955, the Acting Administrator of the Rural Electrification Administration, one of the defendants herein, approved a loan to the Central Iowa Power Co-operative.

3. A portion of this loan was to be used to finance the construction of a transmission line for one of CIPCO's customers, the Greene County Cooperative.

4. The Greene County Cooperative has entered into a contract with the Lehigh Sewer Pipe & Tile Co., of Lehigh, Iowa, to supply them with 60-cycle electrical power, which will be supplied from said transmission line.

5. The Lehigh Pipe Co. is presently a customer of the plaintiff, Iowa-Illinois Gas & Electric Co.

Conclusions of Law

1. Plaintiff has no standing to sue. *Kansas City Power & Light Co.* v. *McKay*, 96 U.S. App. D.C. 273, 225 F. 2d 924 (1955), *cert. denied* 350 U.S. 884.

35 2. The motion for a preliminary injunction will be denied.

F. Dickinson Letts
Judge

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36 Filed Sep. 26, 1956

Order

This cause having come on for hearing on plaintiff's motion for a preliminary injunction, and in accordance with the findings of fact and conclusions of law entered herein, it is by the Court this 26th day of September, 1956,

Ordered, That plaintiff's motion for a preliminary injunction be and it is hereby denied.

F. Dickinson Letts
Judge